

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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SOLIVAN FRANCISCO SOLIVAN,

Petitioner,

Case No. 2:10-cv-68

v.

Honorable R. Allan Edgar

GREG McQUIGGIN,

Respondent.

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**ORDER ADOPTING AND APPROVING**  
**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On March 28, 2013, U.S. Magistrate Judge Greeley entered a Report and Recommendation ("R&R") recommending that Petitioner's habeas petition be dismissed with prejudice. Doc. No. 27. Petitioner has filed objections to the R&R. Doc. No. 29. This Court is required to make a de novo determination of those portions of the R&R to which objections have been filed, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Petitioner objects to Magistrate Judge Greeley's finding that Petitioner did not establish actual innocence in order to excuse the procedural default of the majority of his claims. The Court agrees with Magistrate Judge Greeley that Petitioner has failed to present reliable new evidence to establish actual innocence. Petitioner further argues that he established a claim of ineffective assistance of counsel. Specifically, he asserts that his trial counsel only came to see him twice before trial and should have been better prepared. The Court agrees with Magistrate Judge Greeley's finding that the Michigan Court of

Appeals' decision on this claim was not contrary to and did not result in an unreasonable application of clearly established federal law as determined by the Supreme Court. Petitioner's objections are without merit.

Petitioner's objections to the R&R [Doc. No. 28] are DENIED. Magistrate Judge Greeley's R&R [Doc. No. 27] is APPROVED and ADOPTED as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. L. Civ. R. 72.3(b). The petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 is DENIED and DISMISSED WITH PREJUDICE.

If Petitioner files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be DENIED pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack*, 529 U.S. at 484. Reasonable jurists could not find that this decision to dismiss Petitioner's claims is debatable or wrong.

A Judgment consistent with this Memorandum and Order will be entered.

SO ORDERED.

Dated: 8/26/2013

/s/ R. Allan Edgar  
R. Allan Edgar  
United States District Judge